FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 310/2007

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders.	Court's or Judge's Orders

CORAM:- **R. V. MORE, J.**
DATE:- 4th May, 2007.

1. Heard Mr. Darda, Advocate for the petitioner and Mr. Gode, Advocate for respondent No. 1.

2. The petitioner (who was respondent No. 3 in the election petition) by the present writ petition challenges the legality and validity of the judgment and order dated 09.01.2007 passed by the learned Jt. Civil Judge Junior Division, Gondia in Election Petition No. 2/2005 whereby the petitioner's election to the Member of Gram Panchayat Shejgaon, tq. dist. Gondia is set aside and the respondent No. 1 was declared as elected from Ward No. 3 of the above said village.

3. The village Shejgaon was divided in three wards for the

purpose of election and three candidates are to be elected from each Ward. The present petition pertains to the election from Ward No.3. Out of three seats for which the elections are to be conducted from Ward No. 3, one was reserved for O.B.C. Male candidate, one for General Women Candidates and third one was for General male category candidate.

4. From the O.B.C. Category, apart from respondent No. 1 there were other two candidates contesting the election. From the Women Category there were three candidates in the field and from the general male category three candidates including the petitioner were in the field.

The voting for the above said seats took place on 21.06.2005 and the counting started on 22.06.2005. The respondent No. 2-Returning Officer, firstly declared the result of O.B.C. category and after declaration of the result of O.B.C. Category, he declared result of the Women category candidates. After declaration of the

result of Women category candidates, the respondent No. 2-Returning

Officer, for the purpose of declaration of the result of the remaining seat from the candidates who filled up forms from general male category only and accordingly declared the petitioner as elected from general male category.

5. The respondent No. 1 being aggrieved by the declaration of the result preferred Election Petition No. 2/2005 under Section 15 of the *Bombay Village Panchayats Act*. It was his contention that under the provision of Rule 34 of the *Bombay Village Panchayats (Election Rules), 1959,* respondent No. 2 was duty bound while declaring the result of general male category to consider all the remaining candidates from all the categories. The respondent No. 1 having secured more votes than the petitioner, he ought to have been declared elected from general male category though he contested the election from the O.B.C. category.

6. The learned Jt. Civil Judge Junior Division, Gondia after granting opportunity of hearing to the parties concerned upheld the contention of the respondent No. 1 and came to the conclusion that respondent No. 2-

Returning Officer committed error in declaring the petitioner as elected from general male category, consequently his election was set aside his respondent No. 1 was declared elected from Ward No. 3 in place of the petitioner. This order is impugned in the present writ petition.

7. There is no dispute that three candidates, one from O.B.C. male category, one from general Women category and one from general male category were to be elected from Ward No. 3 and three candidates including respondent No. 1 were contesting the election from the O.B.C. category. Three women candidates were contesting from the seat reserved for the general women candidates and three candidates including the present petitioner, were contesting from general male category. Rule 34 of the said Rules reads as follows:-

> *"**34. Returning Officer to declare result of election.**(1) On completion of the statement showing the number of votes recorded, the Returning Officer shall from amongst the candidates qualified to be chosen to fill reserved a seat, if any, declared subject to the provisions of Rule 5 of the candidate*

who has secured the largest number of votes to be elected to fill such reserved seat:

Provided *that if in the same ward there is a reservation of seats for women and for the Scheduled Castes the Scheduled Tribes, Backward Class of Citizens and Women the result of the seat or seats reserved for Scheduled Castes or Scheduled Tribes or Backward Class of citizens shall be declared first and then the result of the seat or seats reserved for women."*

This Rule is interpreted by this Court in **Shobha Ashok Patil...V/s... Mahananda Rajaram Nikam and others; 1997 (3) Mh. L. J. 353**. The learned Single Judge in para 5 held as under:-

"There is no separate provision whereby a candidate who contests a reserved seat in order to contest the general seat from the same ward has to e deposited another set of fees. Thereafter in terms of Rule 34 the Returning Officer has to declare candidate who has secured the largest number of votes as elected to fill such reserved seat. There is a proviso which seats out of that if there is a reservation of seat for women and for Scheduled Castes and/or Scheduled Tribes the result of seat or seats reserved for Scheduled Castes shall be declared first and then result of the seat or seats reserved for woman. In

other words in a Ward where there is also a reserved seat the Returning officer has to first declare as elected a member of the Scheduled Castes or Scheduled Tribes thereafter declare the result of the seat reserved for woman. After that has been complied with the Returning Officer shall then declare amongst all other candidate excluding those who have been declared elected to fill the reserved seat from amongst candidates who have secured the larges number of votes to be elected to fill the reserved seat. On a perusal of sub-rules 1 and 2, there is no manner of doubt that what is contemplated by the Rule is that in the first instance when there is a seat reserved for Scheduled Castes or Scheduled Tribes the result therein shall be first declared after that is declared, thereafter the result of the seat reserved for woman should be declared and only thereafter from the candidates who are left in the field, the candidate securing highest number of votes has to be declared elected for the remaining seat or seats. This in turn may possible result in all seats being filled by candidate belonging to a particular category to say Scheduled Castes or Scheduled Tribes or Woman."

Turning to the facts of the present case, after declaration of the result of the O.B.C. candidates and Women candidates the respondent No. 2-returning Officer declared the petitioner as elected from General Male category and for that purpose the respondent No. 2 considered the

candidates who filled up the form from the general male category.

8. In view of the provisions of Rule 34 mentioned above and as interpreted by the learned Single Judge of this High Court, it was obligatory on the part of respondent No. 2 that after declaration of the result of O.B.C. category and Women category, to consider all the candidates who are left in the field and the candidates securing highest number of votes ought to have been declared elected. There is no dispute that the petitioner has secured 162 votes and respondent No. 1 secured 186 votes i.e. highest in remaining candidates after declaration of the result of seat reserved for O.B.C. & women category. The learned Judge has correctly appreciated these facts and came to the conclusion that the petitioner's election deserves to be set aside and consequently respondent No. 1 required to be declared as elected.

The learned Judge has correctly appreciated the fact and law, therefore, in my opinion, the impugned judgment and order does not require any interference. The learned counsel for the petitioner could not point out any infirmity or error of law. The writ petition is devoid of

merit and hence the same is dismissed with no order as to the costs

JUDGE

kahale